



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Hannibal Construction, Inc.--Request for
Reconsideration

File: B-237679.2

Date: March 19, 1990

Charles J. Harding, for the protester.
Herbert F. Kelley, Jr., Esq., Department of the Army, for
the agency.
V. Bruce Goddard, Esq., and James A. Spangenberg, Esq.,
Office of the General Counsel, GAO, participated in the
preparation of the decision.

DIGEST

Where the protester is in possession of facts that would establish the timeliness of its protest, that is, that it had filed an earlier agency-level protest, but does not include these facts in its protest to the General Accounting Office (GAO), GAO affirms dismissal of protest that was otherwise untimely on its face.

DECISION

Hannibal Construction, Inc., requests reconsideration of our dismissal of its protest against the rejection of its offer and the award of a contract to PHW, Inc., under request for proposals (RFP) No. DABT10-89-R-0309, issued by the Directorate of Contracting, Fort Benning, Georgia, for the construction of a latrine. We dismissed Hannibal's prior protest because it was not timely filed.

We affirm the prior dismissal.

The RFP, which was 100 percent set aside for emerging small business concerns, closed on September 14, 1989, and Hannibal was the apparent low offeror at \$24,143.60. Hannibal's bid only contained its offered price and failed to include other certifications and representations, such as the certification that it was an emerging small business concern. The contracting officer attempted to permit Hannibal to complete the missing certifications and representations. However, attempts to contact Hannibal by phone were unsuccessful as Hannibal had not included its

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phone number on its offer and directory assistance had no number for Hannibal. Hannibal was then sent an overnight express letter dated September 15 by commercial carrier. Although the letter was signed by an individual at Hannibal's address on September 18, no response was received from Hannibal. On September 19, the contracting officer rejected Hannibal's offer based on its failure to complete the certifications and representations and its failure to respond to the overnight letter. Hannibal was informed of this decision by letter dated September 25, which was received by Hannibal on September 26.

Hannibal stated in its protest letter to this Office that it called the contracting officer on September 26 and informed him that it never received the earlier letter from the Army informing Hannibal to contact it regarding the certifications and representations. Hannibal stated that during this conversation it was informed that the contract had already been awarded to the second-low offeror (PHW).

We dismissed Hannibal's protest as untimely because, although on September 26 Hannibal had been informed its offer was rejected and the second-low bidder had been awarded the contract, Hannibal did not file its protest with the General Accounting Office until November 3. Under our Bid Protest Regulations, to be timely a protest must be filed within 10 working days after the basis for protest is known. 4 C.F.R. § 21.2(a)(2) (1989).

Hannibal requests that we reverse our dismissal. Hannibal contends that it was not until its receipt of the abstract of offers which was sent to it on October 6 that it knew its basis of protest, that it protested this matter to the agency on October 18, and that the contracting officer denied the agency-level protest on October 27.

A protester has the obligation to provide information establishing the timeliness of the protest when on its face the protest otherwise appears untimely. Rudd Constr., Inc.--Second Request for Recon., B-234936.3, July 28, 1989, 89-2 CPD ¶ 88. In other words, when a protest appears untimely on its face, a protester, which is in possession of facts that would establish its timeliness, but which does not initially provide these facts to our Office, runs the risk of dismissal and of our refusal to reconsider the matter when the protester subsequently presents these facts. Id.

Here we are presented with just such a situation. Hannibal's protest was on its face untimely, since it did not mention its previously filed and denied agency-level protest or that its protest was based upon an abstract of offers obtained on October 6. Therefore, since Hannibal was obligated to furnish a detailed statement of factual and legal grounds of protest, 4 C.F.R. § 21.1(b)(4), Hannibal assumed the risk that its protest would be dismissed.

Accordingly, the prior dismissal is affirmed.



 James F. Hinchman
General Counsel